FILE COPY

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 453

WALTER M. BRIGGS, doing business as WALT'S AUTO PARKS AND GARAGES,

*Appellant,*

vs.

THE CITY OF LOS ANGELES, THE BOARD OF POLICE COMMISSIONERS OF THE CITY OF LOS ANGELES, STATE OF CALIFORNIA, MICHAEL KOHN, EMMETT McGAUGHEY, JOHN FERRARO, WILLIAM C. LUCITT and HERBERT A. GREENWOOD, Members of and constituting the Board of Police Commissioners of the City of Los Angeles,

*Appellee.*

WALTER M. BRIGGS, doing business as WALT'S AUTO PARKS AND GARAGES,

*Appellant,*

vs.

THE CITY OF LOS ANGELES, THE BOARD OF POLICE COMMISSIONERS OF THE CITY OF LOS ANGELES, STATE OF CALIFORNIA, MICHAEL KOHN, EMMETT McGAUGHEY, JOHN FERRARO, WILLIAM C. LUCITT and HERBERT A. GREENWOOD, Members of and constituting the Board of Police Commissioners of the City of Los Angeles,

*Appellee.*

## PETITION FOR REHEARING.

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## PETITION FOR REHEARING.

Comes now Walter M. Briggs, doing business as Walt's Auto Parks and Garages, appellant, and petitions for rehearing on the following grounds, to wit,

The court erred in holding in its memorandum decision of December 16th that the appeal should be dismissed for "want of a substantial federal question."

The questions raised in this appeal are substantial and entitle the petitioner to a hearing as a matter of right.

A ruling of a highest state court denying a stay of orders of a State Public Utilities Commission, issued pur-

suant to statutory authority and challenged as violating the federal constitution, amounts to a decision in favor of the validity of the statute upon which the orders were based and is reviewable by the United States Supreme Court upon appeal under Title 28, U. S. C., Section 1257(2), permitting the Supreme Court to review upon appeal judgments of the highest state courts where the question of the repugnancy of a state statute to the federal constitution is presented and the highest state court has decided in favor of the validity of the statute.

*Atchison T. & S. F. R. Co. v. Public Utilities Comm.*, 346 U. S. 346, 98 L. Ed. 51.

Where appellants specifically challenge in the state court the validity of a state tax statute under the commerce clause, the issue of such validity is properly raised, even though none of the alleged operating incidents attacked coincide with the operating incidents found by state courts.

*Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U. S. 157, 98 L. Ed. 583.

The issues involved in this case affect every city in the country where parking lots are located. The city of Los Angeles has conferred upon the Police Commission the power to license and regulate parking lots. In this connection it has also provided that the licenses may be revoked under a number of conditions set out by the Police Commission. Among these conditions is that the owner or his employees in the parking lot may not drive their cars onto the street and back again, or remove any of the cars from the parking lot.

This ordinance which both affects the licensing powers of the city and its right to regulate the flow of automo-

biles to and from parking lots as conducted by the parking lot owners or their operators was challenged in the courts of California as being in violation of the equal protection and due process clauses to the Fourteenth Amendment to the Constitution of the United States. That challenge was denied.

Is the city ordinance of the city of Los Angeles arbitrary and capricious? Has it any reasonable relationship to the object sought to be gained? The challenge of due process and equal protection of the laws was raised in this case both under the due process and equal protections clauses of the Fourteenth Amendment to the Constitution of the United States and the District Court of California denied the challenge under the federal constitution (*Briggs v. City of Los Angeles*, 154 Cal. App. 2d 642) and rendered no opinion on the application for the writ of prohibition and writ of mandate and consolidated the two decisions. The Supreme Court of California denied a hearing on it. Thus the federal questions of substance on the constitutionality of the city ordinance and the acts of the Police Commission under it were specifically raised in the District Court of Appeal of the State of California and the challenge under the federal constitution was denied.

A municipal by-law or ordinance enacted by virtue of power for that purpose delegated by legislature of the state in a state law within the meaning of the federal constitution.

*Atlantic Coast Line R. Co. v. Goldsboro*, 232 U. S. 548, 58 L. Ed. 721;

*Zucht v. King*, 260 U. S. 174, 67 L. Ed. 194;

*Jamison v. Texas*, 318 U. S. 413, 87 L. Ed. 869.

Federal questions of substance are raised by the objection that a state statute declaring invalid any contractural limitation of the right to sue to a shorter period than two years violates the federal constitution.

*Holmes Ins. Co. v. Dick*, 281 U. S. 397, 74 L. Ed. 926.

Likewise a state statute which says that in contracting with the owner of an automobile to drive his automobile on and off of the street of a city and to move it as necessary in case of any need or any emergency, and that an ordinance which forbids the owner of a parking lot, or his employees, doing this violates the Fourteenth Amendment to the Constitution of the United States and Article I, Section 10, of the Constitution of the United States, and impairing the obligation of contract presents a substantial question for this court's review.

One denied a federal right by the highest court of a state may obtain a review by the Supreme Court of the United States *not merely by the grace of the court on certiorari, but as of right by appeal.*

*Angel v. Bullington*, 330 U. S. 183, 91 L. Ed. 832.

Since we have properly filed notice of appeal on federal questions duly raised and affecting parking lots all over the country, we respectfully pray for rehearing of the ground on which the appeal was dismissed.

As said by this court in *Angel v. Bullington*, 330 U. S. 183, 91 L. Ed. 832, at page 836:

> "Here, claims based on the United States Constitution were plainly and reasonably made in the North Carolina suit. The North Carolina Supreme Court met these claims. It met them by saying that the

North Carolina statute did not deal with substantive matters but merely with matters regulating local procedure. But whether the claims are based on a federal right or are merely of local concern is itself a federal question on which this Court, and not the Supreme Court of North Carolina, has the last say. That Court could not put a federal claim aside, as though it were not in litigation, by the talismanic word 'jurisdiction'. When an asserted federal right is denied, the sufficiency of the grounds of denial is for this Court to decide. Titus v. Wallick, 306 U. S. 282, 291, 83 L. ed. 653, 659, 59 S. Ct. 557. Bullington could have come here, not merely by the grace of this Court on certiorari, but on appeal, as did White in White v. Hart, 13 Wall (US) 646, 20 L. ed. 685, *supra*, to challenge, successfully, the right of Georgia to limit the jurisdiction of the Georgia courts; as did the East New York Savings Bank in the recent case of East New York Sav. Bank v. Hahn, 326 US 230, 90 L. ed. 34, 66 S. Ct. 69, 160 ALR 1279, to challenge, though unsuccessfully, the limitation which New York placed upon the jurisdiction of its courts. Cf. Kenney v. Supreme Lodge, L. O. 252 US 411, 416, 64 L. ed. 638, 641, 40 S. Ct. 371, 10 ALR 716."

Since it is a matter of right for the court to take jurisdiction by appeal (*Poulos v. New Hampshire*, 345 U. S. 395, 97 L. Ed. 1105), we respectfully pray for rehearing and the noting of probable jurisdiction in this case.

Respectfully submitted,

MORRIS LAVINE,

*Attorney for Petitioner.*

## Certificate of Counsel.

Morris Lavine, Counsel for appellant hereby certifies that the foregoing petition is filed in good faith and not for delay and that it is based upon grounds created by the court's order since the filing of the original petition for certiorari and is restricted to those grounds.

MORRIS LAVINE,

*Counsel for Petitioner.*